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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of AARON LAMSTEIN)
Application No. 10/801,240)
Filing Date:: 3/15/2004)
For: DEEPERSLEEPER)

Group Art Unit: 3643

Examiner: Andrea M. Valenti

**PETITION TO REVIVE ABANDONED
APPLICATION UNDER 37CFR 1.137(B)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box Non-fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 10-16-06

By: Dennise Cardin
Dennise Cardin

Sir:

BACKGROUND

On April 18, 2005, Petitioner filed a Notice of Appeal which set a two-month extendable period to submit an Appeal Brief. Applicant timely filed its Appeal Brief on April 15, 2005. However, apparently, the Appeal Brief was never received by the U.S. Patent and Trademark Office. Speculating how this could have happened, it was noted that although Applicant used the correct post office address in Alexandria, Virginia and further addressed its Appeal Brief to the Commissioner for Patents, Applicant inadvertently captioned its correspondence "TTAB" rather than "Mail Stop Appeal Brief - Patents." Because of this error, the conclusion was reached that Petitioner failed to comply with the procedures of 37 CFR 1.8 because Petitioner did not mail the Appeal Brief to the correct U.S.P.T.O. mailing address.

REQUEST FOR RECONSIDERATION

Petitioner seeks reconsideration of the dismissal of its previous Petition. It is first asserted by Petitioner that concluding that Petitioner did not comply with the procedures of 37 CFR 1.8 simply puts form above substance. Petitioner correctly addressed its Appeal Brief to the Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia, 22313-1450. Petitioner acknowledges that it inadvertently completed the address of its transmittal to "Box TTAB" rather than "Mail Stop Appeal Brief – Patents."

Nevertheless, anyone opening this mail would clearly recognize that what was being received was an Appeal Brief as the Brief contained the caption of the patent application, and information necessary to direct the Brief to the appropriate recipient, namely, the U.S. Patent and Trademark Office, Board of Patent Appeals & Interferences. The fact that this address error was made should not result in the conclusion that Petitioner's Appeal Brief was not timely filed. In fact it was.

Although Petitioner's prior Petition included a true copy of its previously submitted Appeal Brief, Petitioner now includes yet another copy for completeness.

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Petitioner has also appended a copy of the check which was mailed to the Commissioner of Patents in the amount of \$750 to pay for the petition fee. Further, the undersigned acknowledges that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(B) was unintentional.

Respectfully submitted,
DERGOSITS & NOAH LLP

Dated: October 16, 2006

By: 

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11-4288/1210

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February 23, 2006

PAY TO THE
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\$ 750.00

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Commissioner for Patents
Post Office Box 1450
Alexandria VA 22313-1450

Philip Dergits

DERGOSITS & NOAH LLP

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February 23, 2006 Commissioner for Patents

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